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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,151	03/01/2002	Emile Lonardi	6077-08WOUS	9219

7590 12/31/2003

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EXAMINER

JOHNSON, RAYMOND B

ART UNIT PAPER NUMBER

3652

DATE MAILED: 12/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/070,151

Applicant(s)

Emile Lonardi et al

Examiner

Johnson, R.B.

Group Art Unit

3652

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 03/01/02
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 11-20 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 11-20 is/are rejected.
- ☒ Claim(s) 17-20 is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☒ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

### **OFFICE ACTION**

1. The two (2) documents submitted in the IDS (paper No. 3) have been considered.
2. The preliminary amendment (paper No. 5) has been entered.
3. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.
4. Applicants (not the USPTO) are responsible for submitting the abstract on a separate sheet.
5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 11-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The drive motor/means and "system of gears" to produce the pivotal and rotational movements of the member 32 and 30, respectively is not apparent from either the drawing or the written description description thereof, re pages 7-8, lines 18-32 and 1-7, respectively of the specification..

6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "driving

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mechanism" (claim 11, lines 7-8 and claims 12-2<sup>0</sup><sub>1</sub> dependent therefrom) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 19-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The datum for the "symmetrical half-levers" (60', 60'') reclaims 19, line 2 (original claim 9 now cancelled) is not defined in the original written specification thus it is not known what the levers are symmetrical to. Claim 20 is dependent upon claim 19 and is subject to the same rejection.

7.a Claims 17-20 are objected to because the language "the passage suspension pin" in claim 17, line 2 ~~looks~~<sup>lacks</sup> proper antecedent basis. Claims 18-20 are dependent, directly or indirectly, upon claim 17 and are thus subject to the same objection.

8. In so far as the claim(s) are definite and understood, the following rejection on the prior art is being rendered. The applied references may, but not necessarily respond to the indefinite and/or inadequate disclosure matters noted. Such matters will not be specifically addressed in the rejections.

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 11-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over the French patent No. 882,167 (IDS cite No. 1) in view of either Klutz et al (2, 8) or Furuya et al (14-15, Fig. 3).

The above noted French patent (Figs. 1-3) clearly shows the recited material distributing structure except for the recited two or duplicate pivot lever or arms for the chute 20. Each of the applied secondary references, Klutz et al (2,8), Furuya et al (14-15, Fig 3), show the recited chute with two pivot arms mounted thereon.

It would have been obvious to construct the French's structure with two or duplicate pivot arms to pivot the chute 20 because it is a duplication of part as taught by the secondary references. The recitation of intended or desired use of an apparatus in an apparatus type claim lacks patentable moment.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The pertinent portions of the prior art is referenced to by numerals and/or Figs.

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C(25, 33, 10); D (Fig. 2); and E (38, 56). Reference N has been made of record by applicants.


12. In the absence of more pertinent art it appears dependent claims 19-20 are directed to allowable subject matter if submitted in proper form made definite and supported by an adequate disclosure.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond Johnson whose telephone number is (703) 308-2565. The examiner can normally be reached on Monday-Thursday from 6:30-7:30 A.M. to 5:00-6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, E. D. Lillis, can be reached on (703) 308-3248. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-4177.

  
EILEEN D. LILLIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

  
Johnson/kn  
October 3, 2003